United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 10-1148**
	)	**Issued: February 22, 2011**
U.S. POSTAL SERVICE, CHILLUM PLACE, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 19, 2010 appellant filed a timely appeal of a March 19, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability on January 5, 2009 causally related to her August 21, 2007 employment injury.

FACTUAL HISTORY

This case was previously before the Board. In a decision dated February 19, 2010, the Board found that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on January 5, 2009 causally related to her August 21, 2007 employment

injury.[1] The Board affirmed the Office's April 16, 2009 decision. The facts of the case, as set forth in the prior decision, are incorporated by reference.

In an April 30, 2009 letter, appellant indicated that she was not claiming a new injury only that her condition continued from her 2007 injury. She indicated that she was not paid for from January to May 2, 2009.

The Office received reports from appellant's treating physician, Dr. David M. Smink, a Board-certified orthopedic surgeon. On April 13, 2009 Dr. Smink noted that appellant returned for follow up of her left knee and indicated that appellant did not have any change in medial or anterior knee pain after recently delivering a baby.[2] He noted that appellant had not received authorization for physical therapy or surgery. Dr. Smink diagnosed left knee medial meniscal tear and patellar tendinitis. He recommended physical therapy to help return her to light duty and a left knee arthroscopic partial medial meniscectomy to treat chronic medial knee pain. Dr. Smink requested a second opinion examination and advised that appellant might be able to return to light duty or sedentary work in two to four weeks. In a duty status report of the same date, he checked the box "yes" in response to whether the condition was caused or aggravated by an employment activity. Dr. Smink noted that appellant had no previous left knee issues and requested authorization for surgery and physical therapy. He indicated that appellant was totally disabled from January 5 to May 1, 2009. In an April 30, 2009 report, Dr. Smink noted that appellant was advised to return to work on May 2, 2009 and that her request for physical therapy and surgery had been denied. He noted that, without physical therapy and or surgery, it was unlikely her knee pain would dissipate. An April 30, 2009 duty status report reiterated that appellant was totally disabled from January 5 to May 1, 2009 and could return to light duty on May 2, 2009, with no lifting over 20 pounds.

On May 2, 2009 appellant returned to limited-duty work, four hours a day. The Office paid wage-loss compensation based on a four-hour workday.

On May 6, 2009 the Office referred appellant for a second opinion, together with a statement of accepted facts, to Dr. Kevin Hanley, a Board-certified orthopedic surgeon. In a May 7, 2009 report, Dr. Hanley advised that appellant did not recover from her initial surgery due to recurrent tearing of the meniscus. He advised that the surgery recommended by Dr. Smink was medically related to her work injury in that it was a continuation of her injured meniscus that was directly caused by the work injury. Dr. Hanley found appellant fit for full-time light duty to include standing for half the day and sitting half the day, with no kneeling and squatting. He advised that appellant could not return to her preinjury job.

On May 7, 2009 the Office authorized a left knee arthroscopy.

In a May 18, 2009 attending physician's report, Dr. Smink repeated the diagnosis of a left knee medial meniscus tear that was caused or aggravated by the work injury. Appellant had no

[1] Docket No. 09-1502 (issued February 19, 2010). Appellant's claim was accepted for a traumatic injury on August 21, 2007 resulting in a left knee meniscus tear and effusion of the knee joint.

[2] The record indicates that appellant's child was born on March 10, 2009.

previous left knee symptoms and was totally disabled from January 5 to May 1, 2009. In subsequent reports, Dr. Smink noted that left knee surgery for a partial medial meniscectomy was performed on July 28, 2009. In an October 15 and 19, 2009 attending physician's report, he diagnosed left knee medial meniscal tear and checked the box "yes" in response to whether the condition was caused or aggravated by an employment activity. Dr. Smink reiterated that appellant had no previous left knee issues and requested authorization for surgery and physical therapy. He found that she was totally disabled for the period January 28 to August 10, 2009. Dr. Smink advised that appellant could return to light duty on August 11, 2009 and could stand or walk for 15 minutes every hour, no stairs, climbing or lifting over 10 pounds. The Office also received physical therapy reports and nurses notes.[3]

By decision dated March 19, 2010, the Office hearing representative affirmed the April 16, 2009 decision. He found that, at the time appellant stopped work on January 5, 2009, she worked four hours a day and received wage-loss compensation for four hours a day. The hearing representative directed the Office to pay compensation for four hours a day from January 5 to May 2, 2009.

LEGAL PRECEDENT

A person seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of her claim. A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[5] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[6] Where no such rationale is present, medical evidence is of diminished probative value.[7]

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish

[3] On February 16, 2010 the Office referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon for a second opinion on the extent of appellant's work-related condition and her prospective ability to work. Dr. Smith's March 2, 2010 report did not address the cause of disability from January 5 to May 2, 2009.

[4] 5 U.S.C. §§ 8101-8193.

[5] *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

[6] *I.J.*, 59 ECAB 408 (2008); *Nicole Bruso*, 33 ECAB 1138, 1140 (1982).

[7] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[8] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[9]

ANALYSIS

The Office accepted appellant's claim for effusion of the left knee joint and a medial meniscus tear. It authorized a January 29, 2008 left knee arthroscopy and partial medial meniscectomy and on May 7, 2009, it authorized a left knee arthroscopy, which she underwent on July 28, 2009. The issue is whether appellant established that she was totally disabled from January 5, 2009 due to her August 21, 2007 employment injury. The Office paid compensation for four hours of disability from January 5 to May 2, 2009.

On appeal, appellant questions why she was not paid compensation from January 5 through May 2, 2009 when she was paid compensation for a previous period and for a subsequent period due to her original employment injury. The Board notes that she returned to part-time light duty on April 12, 2008 and stopped working on January 5, 2009. Appellant did not contend that there was a change in the nature and extent of her light-duty requirements. She must establish through medical evidence that she experienced a change in the nature and extent of her injury-related condition which totally disabled her from performing her light-duty job.[10] The Board finds that appellant has not met her burden of proof.

In duty status reports dated April 13 to October 19, 2009, Dr. Smink repeated his diagnosis and checked the box "yes" in response to whether the condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[11] Dr. Smink noted that appellant had no prior left knee issues and requested authorization for surgery and physical therapy. He indicated generally that appellant was totally disabled from

[8] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides that recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.

[9] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack*, 50 ECAB 498, 503 (1999).

[10] *See Theresa L. Andrews*, 55 ECAB 719 (2004).

[11] *Sedi L. Graham*, 57 ECAB 494 (2006).

January 5 to August 10, 2009. In a May 18, 2009 attending physician's report, Dr. Smink repeated his findings and opinion that appellant's condition was caused or aggravated by the employment injury because she had no previous left knee symptoms. The Board has held that an opinion that a condition was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.[12] Dr. Smink provided no additional medical reasoning to support his opinion on total disability from January 5 to May 1, 2009.

On April 13, 2009 Dr. Smink noted appellant's status, diagnoses and a treatment plan. He advised that appellant might be able to return to light duty or sedentary work in two to four weeks. In an April 30, 2009 duty status report, Dr. Smink reiterated that appellant was totally disabled from January 5 to May 1, 2009 and that she could return to light duty on May 2, 2009, with no lifting over 20 pounds. The Board notes that these reports do not contain any explanation regarding appellant's inability to work her light-duty position for the period January 5 to May 2, 2009. To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[13] Dr. Smink did not explain the reasons why there was a spontaneous change in appellant's accepted medical condition that caused total disability during the period at issue.

The reports submitted by Dr. Smink are insufficient to establish appellant's claim because he did not provide a rationalized medical opinion explaining how her left knee condition prevented her from working light duty.[14] Dr. Smink did not describe a change in her condition or explain why, after working light duty for over eight months, she was unable to perform her light-duty position for four hours daily beginning January 5, 2009.[15] The Board notes that such medical reasoning is important as there were other factors that contributed to appellant's inability to work, including her pregnancy and the birth of her child on March 10, 2009, which the physician did not address. The Board finds that Dr. Smink's medical reports are insufficient to establish appellant's claim.[16]

The Board also notes that the record contains a May 7, 2009 second opinion report from Dr. Hanley. Although Dr. Hanley did not specifically address the period at issue, he did opine that appellant was fit for light-duty activities to include standing for half the day and sitting half the day, with no kneeling and squatting. He did not offer any opinion that appellant was totally disabled.

[12] *Michael S. Mina*, 57 ECAB 379 (2006).

[13] *K.C.*, 60 ECAB ___ (Docket No. 08-2222, issued July 23, 2009).

[14] *See S.F.*, 59 ECAB 525 (2008).

[15] *See Richard A. Neidert*, 57 ECAB 474 (2006).

[16] *See Cecelia M. Corley*, 56 ECAB 662 (2005).

On appeal, appellant contends that she was totally disabled from January 5 through May 2, 2009. As noted, the medical record does not provide rationale to establish that she was totally disabled for the claimed period.

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability on January 5, 2009 causally related to her August 21, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board